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10 PLEASE SEE SIGNATURE PAGE FOR
11 COMPLETE LIST OF COUNSEL

12 *Attorneys for Plaintiffs*
13 AMERICAN CIVIL LIBERTIES UNION
14 IMMIGRANTS' RIGHTS PROJECT and CENTER
15 FOR GENDER & REFUGEE STUDIES AT THE
16 UNIVERSITY OF CALIFORNIA HASTINGS
17 COLLEGE OF THE LAW

18 UNITED STATES DISTRICT COURT
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO DIVISION

21 AMERICAN CIVIL LIBERTIES UNION
22 IMMIGRANTS' RIGHTS PROJECT &
23 CENTER FOR GENDER & REFUGEE
24 STUDIES AT THE UNIVERSITY OF
25 CALIFORNIA HASTINGS COLLEGE
26 OF THE LAW,

27 Plaintiffs,

28 v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, an agency of the
Department of Homeland Security,

Defendant.

Case No. 3:16-cv-06066-JSC

SETTLEMENT AGREEMENT

Freedom of Information Act, 5 U.S.C. § 552

In consideration of the terms set forth in this Settlement Agreement and the covenants and conditions contained herein (the "Agreement"), Plaintiffs American Civil Liberties Union Immigrants' Rights Project and Center for Gender and Refugee Studies at the University of California Hastings College of the Law (collectively "Plaintiffs") and Defendant U.S.

1 Immigration and Customs Enforcement (“ICE”), an agency of the Department of Homeland
2 Security, (the “Defendant”), who are collectively referred to herein as “the Parties,” by and
3 through their undersigned counsel, hereby agree as follows:

4 This action arises under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). In
5 October 2015, Plaintiffs made FOIA requests for information regarding ICE’s detention of
6 asylum seekers who are found to have a credible fear of persecution. Plaintiffs specifically asked
7 for statistical records that ICE is required to maintain pursuant to a 2009 ICE Directive, as well as
8 related policy documents and Agency communications that are in ICE’s possession. Plaintiffs
9 contended that more than a year after the requests were filed, ICE had provided only a fraction of
10 these records. Therefore, having exhausted administrative remedies, Plaintiffs brought this suit.

11 Defendant contended that with the production of ICE’s Third Supplemental Response, it
12 had complied with Plaintiffs’ FOIA requests.

13 WHEREAS, to date, ICE has not produced analyses of monthly reports or random
14 samplings of individual case information because ICE does not possess any such analyses or
15 samplings.

16 WHEREAS, to date, ICE has produced one quality assurance report from 2010 because it
17 is the only quality assurance report in its possession.

18 WHEREAS, as used herein, “monthly reports,” shall mean the monthly reports for each
19 ICE field office which are required under the 2009 ICE Parole Directive.

20 WHEREAS, after good-faith negotiations, the Parties have agreed to resolve this matter
21 upon the terms, and subject to the conditions, set forth in this Agreement.

22 IT IS HEREBY AGREED AS FOLLOWS:

- 23 1. ICE will provide Plaintiffs with an informal description of the documents ICE has
24 withheld in their entirety and written justification for such withholding within 30
25 days of the Court’s execution of the proposed Order attached to this Agreement.
- 26 2. Plaintiffs agree to forgo a demand for a Vaughn Index and formal search
27 description declarations.
- 28 3. To date, ICE has produced monthly reports detailing the number of parole

1 adjudications for each area of responsibility, including the result of the
 2 adjudication and the underlying basis to grant or deny parole through September
 3 2015. ICE agrees to provide monthly reports from May 2017 through December
 4 2017, should information about parole decisions within each ICE field office
 5 continue to be collected.¹ Within 60 days of the Court's execution of the proposed
 6 Order attached to this Agreement, ICE will provide monthly reports from January
 7 2017 - May 2017. Subsequently, ICE will produce another report every 30 days,
 8 beginning with the June 2017 report. ICE will produce the "Cumulative JAN-
 9 DEC" tabs for December 2015 and December 2016 along with the June 2017
 10 report. The final report from December 2017 will be produced to Plaintiffs no
 11 later than March 31, 2018.

- 12 4. Plaintiffs agree to forgo a demand for unique identifiers in any of the monthly
 13 reports produced by ICE and agree not to raise any challenges as to the searches
 14 conducted and object over exemptions applied to records assuming the data is
 15 produced in a similar manner to the prior monthly reports.
- 16 5. Within 30 days of the Court's execution of the proposed Order attached to this
 17 Agreement, ICE shall provide clarification of the meaning of "Field Office
 18 Codes", "DCO Codes" and specific acronyms as they appear in the "Comments"
 19 field of the reports it has already produced. Plaintiffs provided a list of codes and
 20 acronyms on March 22, 2017.

21 The parties have not yet reached an agreement regarding attorney fees. The case will
 22 remain active until reasonable attorney fees have been negotiated.

23 The Parties agree that in exchange for Defendant's agreement to comply with the
 24 conditions set forth above, upon the execution of this Agreement, ICE's obligations under the
 25 FOIA are deemed satisfied and ICE will not be required to search, process, or release any
 26 additional records other than what has been agreed to in this agreement.

27 ¹ ICE has represented to Plaintiffs that the Enforcement and Removal Organization ("ERO") has every intention of collecting this
 28 information through December 2017 and ICE has no reason to believe the information will not be available through the end of
 2017.

1 The Parties acknowledge that this Agreement is entered solely for the purpose of settling
 2 and compromising any remaining claims in this action without further litigation, and it shall not
 3 be construed as an admission by any party of the truth of any allegation or the validity of any
 4 claim asserted in this action. This Agreement shall not be used in any manner to establish
 5 liability for fees, amounts, or hourly rates in any other case or proceeding. This Agreement shall
 6 only apply to the FOIA requests that form the basis of the above-captioned case and shall in no
 7 way prejudice Plaintiffs' ability to make new FOIA requests.

8 The Parties agree to use their best efforts to resolve any further disputes informally
 9 including additional check-ins regarding production of remaining documents. However, the
 10 parties will ask the Court to retain jurisdiction over the case until reasonable attorneys' fees are
 11 negotiated and to enforce compliance by both parties with the settlement agreement. The Court's
 12 retained jurisdiction shall expire within 30 days of the production of the last monthly report
 13 pursuant to this agreement, unless prior to such time one of the parties moves the Court to extend
 14 its retention of jurisdiction.

15 Respectfully submitted,

16
 17 Dated: August 7, 2017

United States Attorney's Office

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Dated: August 3, 2017

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